**IN** THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL WRIT PETITION NO.1218 OF 2006

Saquib Abdul Hamid Nachan,
Aged 46 years, Occ: Business,
R/o Village Borivali,
Post: Padgha, Taluka Bhiwandi,
District: Thane (Presently
in Judicial Custody at
Central Jail, Thane.) .... Petitioner

- Versus -

The State of Maharashtra
through DCB, CID, Police HQ,
Crawford Market, Mumbai. .... Respondent

Shri Prakash Naik, Advocate, appointed for
the Petitioner.

Sarvasri S.R. Borulkar, Public Prosecutor,
with D.S. Mhaispurkar, Addl. Public Prosecutor,
for the Respondent.

**CORAM:** R.M.S. KHANDEPARKAR &
S.R. SATHE, JJ.

**DATED:** AUGUST 28, 2007

**ORAL JUDGMENT (Per R.M.S.Khandeparkar, J.):**

1. Heard. The petitioner challenges the order dated 19-7-2003 passed by the learned Special Court constituted under the Prevention of Terrorism Act, 2002, hereinafter called as "POTA", taking cognizance in POTA Special Case No.2 of 2003 as well as the order dated 22-7-2003 passed by the same Court remanding the accused to judicial custody until the disposal of the case.

2. The facts in brief are that the petitioner was taken into custody by the DCB-CID, Unit-VII on 10-4-2003 in connection with C.R. No.21 of 2003 registered with the Kurla Railway Police Station in respect of the bomb blast at Mulund railway station disclosing registration of the offences punishable under various provisions of the Indian Penal Code as well as under Sections 3 and 4 of POTA. The said bomb blast had occurred on 13-3-2003. The petitioner was then remanded to police custody in respect of the said offence. The petitioner was again arrested immediately after expiry of the police custody in the above referred C.R. No.21 of 2003 in relation to another C.R. No.156 of 2003, registered in connection with the bomb blast at Ghatkopar which had occurred on 2-12-2002. Such arrest was made on 29-4-2003. In relation to the said case, the petitioner was discharged from the said case on 4-3-2004. The petitioner was also arrested in connection with the bomb blast which had occurred at Vile Parle on 23-5-2003. Pursuant to the offence being registered as C.R. No.9 of 2003 and which related to the incident which had occurred on 27-1-2003, the petitioner was remanded to police custody. The petitioner was again arrested in relation to C.R. No.124 of 2002, registered with the Bombay Central Railway Police Station on 6-6-2003 in respect of the bomb blast at Bombay Central. The authorities under the POTA filed a chargesheet in relation to all the said

C.Rs under POTA on 19-7-2003.

3. On 19-7-2003 when the matter came up before the trial Court under POTA, the Court took cognizance of the offences punishable under Sections 3, 4, 5, 20 and 21(2)(4) of POTA, Section 5 and 9(b) of the Indian Explosives Act, 1884, Sections 3, 4 and 5 of the Explosive Substances Act, 1908 and Section 3 of the Prevention of Damage to Public Property Act r/w Sections 151, 152 and 153 of the Railways Act, 1989 further r/w Section 121(A), 122 and 302 r/w Section 34 of the Indian Penal Code further r/w Sections 307, 324, 326 and 427 r/w Section 120-B of the Indian Penal Code against sixteen accused who were produced before the trial Court. The order dated 22-7-2003 relates to the remand of the petitioner to judicial custody till the disposal of the trial.

4. The learned Advocate appearing for the petitioner sought to challenge the said orders including the initiation of proceedings under POTA on two grounds: firstly, that the offence in relation to the bomb blasts at Mulund, Vile Parle and Bombay Central are distinct offences and three separate C.Rs have been registered. It was further sought to be contended that the investigation was carried out by different Units of the DCB-CID, by different officers and POTA came to be

applied at different stages with different accused being arrested for such offence and it was, therefore, contended that separate chargesheet ought to have been filed in respect of each C.Rs. Secondly, it is sought to be contended that the purported chargesheet filed in relation to C.R. No.21 of 2003 (Mulund blast) do not contain all the requisite documents in respect of offences relating to the Vile Parle and Bombay Central bomb blasts and therefore it cannot be said that there is a final report submitted to the trial Court in relation to the offences punishable under POTA in respect of the said blasts and in that sense it is an incomplete chargesheet of which no cognizance could have been taken by the POTA Court. On the above grounds, the impugned order of taking of cognizance by the Special Court in relation to offences alleged to have been committed under POTA is sought to be challenged. The learned P.P., on the other hand, has submitted that though there are separate C.Rs, nothing prevents the investigating agency from filing one chargesheet in relation to all these three C.Rs once it is the case of the investigating agency that they form part of the same conspiracy and there are series of offences as a result of the same conspiracy. It was further contended that leave has already been sought of the Special Court to submit further chargesheet and further materials in support of the chargesheets filed against the accused

and in that view of the matter, it cannot be said that there is any incomplete chargesheet as such.

5. The Section 29 of POTA to which attention was drawn while canvassing the contention on behalf of the petitioner speaks about the procedure and powers of Special Courts under POTA. In terms of sub-section (1) thereof, subject to the provisions of Section 50, a Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts that constitute such offence or upon a police report of such facts. The sub-section (2) thereof provides that where an offence triable by a Special Court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the Special Court may, notwithstanding anything contained in sub-section (1) of Section 260 or Section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of Sections 263 to 265 of the Code, shall so far as may be, apply to such trial, provided that when, in the course of a summary trial under the said sub-section, it appears to the Special Court that the nature of the case is such that it is undesirable to try it in a summary way, the Special Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the

manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to and in relation to a Special Court as they apply to and in relation to a Magistrate, provided further that in the case of any conviction in a summary trial under the said Section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding one year and with fine which may extend to rupees five lakh. The sub-section (3) thereof provides that subject to the other provisions of POTA, a Special Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session. Plain reading of these provisions would disclose that the procedure which is required to be followed by the Special Court in relation to hearing of the matter under POTA would be the procedure prescribed under the Code of Criminal Procedure, subject to the modification disclosed under POTA.

6. The Section 219 of the Code of Criminal Procedure provides that three offences of same kind within one year may be charged together. The Section 220(1) of the Code of Criminal Procedure provides that if, in one series of acts so connected together as to form the same

transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence. The sub-section (3) thereof provides that if the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences. The sub-section (4) provides that if several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, or such acts.

7. Plain reading of Section 29 of POTA along with Sections 219 and 220 of the Code of Criminal Procedure, therefore, would disclose that there is no obligation cast upon the investigating machinery to file three separate chargesheets in respect of each separate C.Rs, as sought to be contended. Attention, however, is sought to be drawn to Section 154 of the Code while strenuously arguing that the police cannot file one chargesheet in respect of three C.Rs.

8. The Section 154(1) of the Code provides that every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. The Section 154(1) merely speaks of recording of the information received relating to cognizable offence and the obligation on the part of the police authorities recording such information to furnish a copy of such recording to the informant by the officer who is recording such information. It was then sought to be relied upon on Section 173 of the Code to canvass the said point.

9. The Section 173(1) of the Code of Criminal Procedure provides that every investigation under Chapter XII shall be completed without unnecessary delay. The sub-section 2(i) provides that as soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating

the names of the parties, the nature of the information, the names of the persons who appear to be acquainted with the circumstances of the case, whether any offence appears to have been committed and, if so, by whom, whether the accused has been arrested, whether he has been released on his bond and, if so, whether with or without sureties and whether he has been forwarded in custody under Section 170. The sub-section 2(ii) thereof provides that the officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any whom the information relating to the commission of the offence was first given. The Section 173(1) and (2) undoubtedly, requires the investigating agency to complete the investigation without unnecessary delay and on completion of the investigation, forward the police report to the concerned Magistrate. It nowhere provides that the investigating agency would not be entitled to file one report in relation to more than one C.R. recorded separately. There is no bar under the said provision nor the learned Advocate has been able to point out any other provision which will debar the investigating agency from combining more than one C.R. in one chargesheet and more particularly, when the Court is competent to take cognizance in relation to all such C.Rs. If the territorial jurisdiction of the Court extends to all the police stations where such different

C.Rs are recorded, merely because they are recorded at different police stations, that by itself would not prevent the investigating agency from filing one chargesheet in respect of all such C.Rs and this is also clear from the provisions of Sections 219 and 220 of the Code and as rightly submitted by the learned P.P., once it is the contention on behalf of the investigating agency that all the offences under three different C.Rs were part of the same conspiracy, there can be hardly any scope to contend that the police authorities could not have made one report in relation to all such C.Rs.

10. The second contention which is sought to be raised is also found to be devoid of substance. Nothing prevents the police authorities from continuing with the investigation even after filing the chargesheet, subject to compliance of Section 173(8) of the Code. The said Section provides that nothing in the said section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, whereupon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or

reports as they apply in relation to a report forwarded under sub-section (2). Undisputedly, the order dated 19-7-2003 apparently discloses that leave has been sought and obtained to file further chargesheet on completion of further investigation in the matter. Obviously, therefore, merely because some more documents are required to be filed in relation to the chargesheet in respect of a particular C.R., that would not make a chargesheet to be incomplete. The investigating agency is, in the facts and circumstances of the case, duly empowered to furnish further report/s in terms of Section 173(8).

11. For the reasons stated above, therefore, we do not find any case having been made out for interference in the impugned orders and, therefore, the petition fails and is hereby dismissed. The rule is discharged with no order as to costs.

(S.R. Sathe, J.) (R.M.S.Khandeparkar, J.)

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